

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CARLOS RODRIGUEZ, et al. : CIVIL ACTION
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CITY OF PHILADELPHIA : NO. 07-cv-04021-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

April 18, 2008

The defendant, City of Philadelphia, has filed a Motion for Judgment on the Pleadings. After carefully considering defendant's brief in support of its motion, plaintiffs' brief in opposition, the defendant's brief in rebuttal, and plaintiffs' brief in sur-rebuttal, I am satisfied that the issues are not sufficiently clear to permit disposition on a motion for judgment on the pleadings. Plaintiffs' allegations, as interpreted by plaintiffs' counsel, could, if established as facts, enable a reasonable fact-finder to predicate liability upon a "state-created danger" theory, and/or one or more of the other theories propounded in plaintiffs' argument. The Motion for Judgment on the Pleadings will therefore be denied, without prejudice to a properly supported motion for summary judgment, if warranted.

An Order follows.

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ORDER

AND NOW, this 18th day of April 2008, upon consideration of defendant's Motion for Judgment on the Pleadings, and the responses thereto, IT IS ORDERED:

that the defendant's motion is DENIED, without prejudice to a properly supported motion for summary judgment, if appropriate

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.